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MINIMUM WAGE RESTORATION ACT OF 1989

MARCH 13, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of March 9 (legislative day, January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 4]

The Committee on Labor and Human Resources, to which was referred the bill (S. 4) to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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I. THE BILL AS REPORTED

A BILL To amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Minimum Wage Restoration Act of 1989".

[SEC. 2. RESTORATION OF MINIMUM WAGE.

[Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

["(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1989, not less than $3.85 an hour during the year beginning January 1, 1990, not less than $4.25 an hour during the year beginning January 1, 1991, and not less than $4.65 an hour after December 31, 1991;".

[SEC. 3. CHANGE IN ENTERPRISE TEST.

[(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

["(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

[(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

[(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1989";

[(2) by striking out "Fair labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1989" and

[(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

[SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

[(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

[(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

["(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

["(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

[“(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

[“(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico.”; and

[(2) in the first sentence of subsection (c), by striking out “in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands”and inserting in lieu thereof “in Puerto Rico (1) by the United States”.

[(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

[(1) in subsection (a)(3)—

[(A) by striking out “and the Virgin Islands”; and

[(B) by striking out “or the Virgin Islands”; and

[(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

[“(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

[“(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.”.

[(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

[(1) in the first sentence of subsection (a), by striking out “and the Virgin Islands”;

[(2) in the second sentence of subsection (a), by striking out “committee—” and all that follows through the period at the end of the sentence and inserting in lieu thereof the following “committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).”;

[(3) in the third sentence of subsection (a), by striking out “or the Virgin Islands, or in Puerto Rico and the Virgin Islands,”; and

[(4) in the third sentence of subsection (b)—

[(A) by striking out “or in the Virgin Islands”; and

[(B) by striking out “and the Virgin Islands”.

[(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 14(b) of such Act (29 U.S.C. 214(b)) is amended by striking out “or the Virgin Island” each place it appears in paragraphs (1)(A), (2), and (3).]

SECTION 1. SHORT TITLE.

This Act may be cited as the “Minimum Wage Restoration Act of 1989”.

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1989, not less than $3.85 an hour during the year beginning January 1, 1990, not less than $4.25 an hour during the year beginning January 1, 1991, and not less than $4.65 an hour after December 31, 1991;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Subsection (s) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)) is amended to read as follows:

"(s)(1) 'Enterprise engaged in commerce or in the production of goods for commerce' means an enterprise that—

"(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

"(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

"(B) is an activity of a public agency.

"(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.".

(b) PRESERVATION OF COVERAGE.—

(1) IN GENERAL.—Any enterprise that on December 31, 1989, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) is not subject to such section shall—

(A) pay its employees not less than the minimum wage in effect under such section on December 31, 1989;

(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

(C) remain subject to section 12 of such Act (29 U.S.C. 212).

(2) VIOLATIONS.—A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938, as the case may be.

(c) CONFORMING AMENDMENTS.

(1) Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended by striking out paragraphs (2) and (4).

(2) Section 13(g) of such Act is amended—

(A) by striking out "paragraphs (2) and" and inserting in lieu thereof "paragraph"; and

(B) by striking out ", except that" and all that follows in such subsection and inserting in lieu thereof a period.

(d) TECHNICAL AMENDMENTS.—Section 3(r) of such Act (29 U.S.C. 203(r)) is amended—

(1) by inserting "(1)" after "(r)";

(2) by striking out ": Provided, That, within" and inserting in lieu thereof a period and "Within";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(4) by striking out "For purposes of this subsection" and inserting in lieu thereof the following: "(2) For purposes of paragraph (1)";

(5) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(6) by striking out "public or private or" in subparagraph (A) (as so redesignated).

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1990.

SEC. 4. PUERTO RICO, VIRGIN ISLANDS, AND AMERICAN SAMOA.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) in the first sentence of subsection (a), by striking out "Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands," and inserting in lieu thereof "American Samoa";

(2) in the second sentence of subsection (a)—

(A) by striking out "such island or islands" and inserting in lieu thereof "American Samoa"; and

(B) by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "American Samoa";

(3) by striking out subsection (e); and

(4) in the section heading, by striking out "PUERTO RICO AND THE VIRGIN ISLANDS" and inserting in lieu thereof "AMERICAN SAMOA".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) in the first sentence, by striking out all that follows "appoint" through the period at the end of the sentence and inserting in lieu thereof "pursuant to sections 5 and 8."; and

(B) by striking out the second sentence; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

"(i) the United States,

"(ii) an establishment that is a hotel, motel or restaurant,

"(iii) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

"(iv) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

"(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on January 1, 1990, and each January 1 thereafter through January 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on January 1, 1994.

"(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on January 1, 1990, and each January 1 thereafter through January 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on January 1, 1995.

"(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on January 1, 1990, and each January 1 thereafter through January 1, 1996, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on January 1, 1996.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "American Samoa";

(2) by striking out the second sentence of subsection (a);

(3) in the third sentence of subsection (a)—

(A) by striking out "Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands," and inserting in lieu thereof "American Samoa"; and

(B) by inserting before the period at the end of the sentence ", and who but for section 6(a)(3) would be subject to the minimum wage requirements of section 6(a)(1)";

(4) in the third sentence of subsection (b)—

(A) by striking out "Puerto Rico or in the Virgin Islands" and inserting in lieu thereof "American Samoa";

(B) by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "American Samoa"; and

(C) by striking out "section 6(c)" and inserting in lieu thereof "section 6(a)(3)"; and

(5) in the section heading, by striking out "PUERTO RICO AND THE VIRGIN ISLANDS" and inserting in lieu thereof "AMERICAN SAMOA".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 14(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "(or in" and

all that follows through "section 6(c))" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1990, and (2) 50 percent of the applicable minimum wage rate after December 31, 1990,".

II. Summary of the Bill

S. 4, the Minimum Wage Restoration Act of 1989, amends the Fair Labor Standards Act of 1938 by adjusting the federal minimum wage provided in section 6(a)(1) of the FLSA from the current level of $3.35 an hour to $4.65 an hour, in annual steps of 50 cents, 40 cents, and 40 cents. Beginning on January 1, 1990, the minimum wage will be $3.85 an hour. Beginning on January 1, 1991, the minimum wage will be $4.25 an hour, and on January 1, 1992, it will be $4.65 an hour.

Also adjusted is the enterprise test provided in sections 3(s), 13(a)(2) and 13(a)(4) of the FLSA, to a more uniform level of $500,000 in annual gross sales. Public agency and family business thresholds are unchanged from current law by this section. Employees covered by current law affected by this adjustment would continue to be entitled to receive at least $3.35 an hour, overtime, and child labor protections, even though their employer falls into this expanded exempt category.

The new rates are applicable to Puerto Rico and the Virgin Islands. This is a change from the existing law providing for these rates to be established by special industry committees. American Samoa will continue to utilize the procedures in the Act regarding special industry committees.

However, in the case of Puerto Rico, the full 6(a)(1) rate will continue to apply to employees of the United States, hotel, motel, restaurants, and related food services establishments. The full rate will also apply to workers in industries with average wages of $4.65 an hour or above. For industries with average wages between $4.00 and $4.64, the full rate must be reached in equal increments in five years. In industries with average wages below $4.00 an hour, the full rate must be reached in equal increments in six years, and if the average wage in public sector categories is below $4.00 an hour and those workers were brought into coverage under the FLSA by Public Law 99–150, the full rate must be reached in equal increments in a total increments in seven years.

The bill also adjusts the tip credit provision of the FLSA from current 40% to 45% in 1990 and 50% thereafter.

III. Background and Need for Legislation

A. BACKGROUND

June 25, 1988 marked the 50th anniversary of the passage of the Fair Labor Standards Act of 1938. At the beginning of the legisla-

tive debate on this uniform federal labor standards bill, President Roosevelt stated:

> Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-body working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason of chiseling workers' wages or stretching workers' hours.

A year, a month and a day later when President Roosevelt signed the Fair Labor Standards Act into law, the President observed: "Except for the Social Security Act, it is the most far-reaching, far-sighted program ever adopted here or in any country."

This public policy of a level which wages could not fall was, and still is, intended to enable a full-time worker to maintain a minimum living standard without either Govenment assistance or the deprivation of basic necessities.

During original consideration of the FLSA and during the debate on subsequent amendments to expand coverage and to adjust the wage levels to account for inflation, business opponents stridently have claimed immediate and significant adverse employment consequences flowing from the establishment and maintenance of this public policy.

Yet Congress repeatedly has reaffirmed the national commitment to a minimum wage which is a living wage, and the opposition predictions of significant adverse employment consequences did not come to pass. An historic review of the legislative history of the major amendments of the FLSA and the accompanying employment impact might help put current predictions of significant adverse employment consequences in perspective.

1949 amendments

Congress raised the minimum wage from 40 cents to 75 cents an hour in 1949, an 87.5% increase. During the deliberation of the amendments, business organizations consistently warned of significant increases in unemployment and inflation as a result of the legislation.

Yet overall unemployment decreased from 5.9% in 1949 to 5.3% in 1950, youth unemployment fell from 13.4% to 12.2%, and total employment rose more than the prior year when there was no increase in the wage.

1955 amendments

Congress raised the wage to $1.00 an hour, a 33% increase. Again Congress heard stern predictions from business groups of the certain unemployment and inflation which would follow as a consequence of the increase. The U.S. Chamber of Commerce warned in testimony to the Committee: "Low paid workers who are covered by the law will have been barred from jobs by members of Congress."

Yet overall unemployment fell from 4.4% to 4.1%, youth unemployment slightly increased from 11.0% to 11.1%, and total employ-

ment increased more in 1956 than in the prior two years in which there had been no increase.

1961 amendments

Congress increased the minimum wage to $1.15, and to $1.25 in 1963, and expanded coverage to retail and service establishments. Again during consideration of the legislation, business opponents predicted significant impact on unemployment and inflation. In testimony before this Committee, the U.S. Chamber of Commerce stated: "Many retail and service employers have already predicted layoffs * * * if brought under coverage of the $1.25 law." The Chamber went on to assert: "Whatever good might result from minimum wage legislation would be far outweighed by the unemployment and inflation the legislation would provoke."

Yet retail and service employment, which had increased 1.2% between 1960 and 1961 when not covered by the FLSA, jumped 3.3% between 1961 and 1962. Overall unemployment fell from 6.7% to 5.5%, youth unemployment fell from 16.8% to 14.7%, and overall employment increased six times as much as in the prior year when there had been no increase. Inflation increased at a lower rate in the year after the increase in the minimum wage took effect than in the year prior to the increase.

1966 amendments

Congress increased the minimum wage from $1.25 to $1.40 in 1967, to $1.60 in 1968, and expanded the coverage of the FLSA. Once again this committee received testimony from a variety of business organizations predicting significant adverse employment and inflationary impact. Yet unemployment fell from 3.8% in 1966 to 3.6% in 1968, youth unemployment fell from 12.8% to 12.7% for the same time period, employment increased by over 3 million workers, and labor market participation rates hit a post-war high in 1969.

The increase which took effect in 1968 raised the minimum wage to 55.8% of the average hourly earnings, the highest relative level of the minimum wage. Yet careful study of its impact on employment led Secretary of Labor George Shultz to report to Congress in 1970:

> There was continued economic growth during the period covering the third phase of the minimum wage and maximum hours standards established by the FLSA Amendments of 1966. Total employment on non-agricultural payrolls (seasonally adjusted) rose in 28 out of 32 consecutive months between January 1967 and September 1969. In the most recent 12-month period, employment climbed 3.2% * * * between September 1968 and September 1969. Employment rose in all major nonagricultural industry divisions during the 12 month period between September 1968 and September 1969. In retail, services and state and local government sector—where the minimum wage had its greatest impact in 1969, since only the newly covered workers were slated for Federal minimum wage increases—employment rose substantially.

The report to Congress of Secretary of Labor Hodgson the following year confirmed Secretary Shultz's analysis:

> In view of the overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price, or employment trends. Of much greater significance, however, is the fact that the 15 cent boost did help two million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 amendments.

1974 amendments

Congress increased the minimum to $2.00 in May of 1974, $2.10 in 1975, and $2.30 in 1976. In hearings before this committee prior to passage of the increase, again businesses testified to the adverse employment impact of the proposal. One witness for the American Retail Federation testified that they would be forced to implement "alternatives", including: "Obviously to reduce the number of employees. The first ones to go would have to be marginal employees we in many cases are carrying now. We would also have to suggest retirement to employees who are no longer productive but who we are currently carrying."

Yet even during the 1975 recession during which unemployment rose from 5.5% in 1974 to 7.6% in 1976 and youth unemployment increased from 16% to 19%, retail employment increased by 655,000 jobs, a 5.2% increase.

1977 amendments

Congress increased the minimum wage in four steps, to $2.65 in 1978, $2.90 in 1979, $3.10 in 1980, and to the current $3.35 in 1981. This committee again received testimony from business organizations predicting significant job loss stemming from passage of the amendments. The U.S. Chamber of Commerce testified that the proposed minimum wage increase would result in about 2 million lost jobs. They offered as evidence a study providing a state-by-state breakdown of the lost jobs totaling 1,977,000 by 1980, if the minimum wage reached $3.15 an hour (the bill which passed reached $3.10 by 1980). The Chamber witness stated: "Rather than help a person who is now making $2.30 by raising the minimum wage to $2.65 or $3.00, you are hurting him because you put him out of work. So the minimum wage may be $3.00, but his wage is zero unless he can collect welfare, because his job is eliminated."

The Chamber testimony also calculated a first year job loss of 400,000, 387,000 of which would be teen-age jobs. Minority teen-age unemployment would increase almost 6% to 45% with a $2.65 minimum the first year.

One retailer testified that 5,800 of 29,000 convenience stores would have to close if the minimum wage increase became law. He concluded: "The minimum wage increases contemplated by S. 1871 could sound the death knell for a large number of convenience food stores. It could force mass lay-offs and could cause some companies to completely go out of business."

Yet the following table demonstrates what the actual employment impact was:

Year	Impact minimum wage	Percent increase	Unemployment percent	Youth unemployment (percent)	Total employment [1] (thousands)
1977	$2.30	0	7.1	17.8	88,734
1978	2.65	15	6.1	16.4	92,661
1979	2.90	9.4	5.8	16.1	95,477
1980	3.10	6.9	7.1	17.8	95,938
1981	3.35	8.1	7.6	19.6	97,030
1982	3.35	0	9.7	23.2	96,125

[1] Civilian, nonagricultural industries.

As the table indicates, total employment increased 8,296,000 1977–1981. The only decline in employment occurred in 1982, a year in which there was no increase in the minimum wage. Employment increased 3,313,00 in 1977, also a year in which there was no increase, and it increased 3,927,000 in 1978, the year a 15% increase of the minimum wage went into effort. Teen employment increased 382,000 in 1978, as compared to an increase of 352,000 in 1977 when there was no increase in the minimum wage. Minority teen unemployment declined 1.8% in 1978 when the minimum wage reached $2.65, instead of the almost 6% increase projected by the U.S. Chamber of Commerce testimony in 1977.

Contrary to the testimony projecting 5,800 of the 29,000 convenience stores closing if the minimum wage were increased, the number of convenience stores increased by 4,100 between 1977 and 1978, as compared to an increase of 2,000 between 1976 and 1977, when there was no increase in the minimum wage.

Retail employment also increased by 1,381,000 1977–1981. The only decline in retail employment was in 1982, a year in which there was no increase in the minimum wage. Retail employment increased in 1977 by 599,000, when there was no increase in the minimum wage, and by 765,000 in 1978, the year a 15% increase was in effect.

The 1977 amendments also created the Minimum Wage Study Commission to examine the impact of the FLSA. In the May 24, 1981 letter to the President and Congress accompanying the Commission's recommendations, the Commission Chairman termed the research "the most exhaustive inquiry ever undertaken into the issues surrounding the Act since its inception."

The Chairman of the Minimum Wage Study Commission concluded in the seven volume report:

> The evidence suggests that recent changes in the Fair Labor Standards Act have had relatively little impact on national unemployment levels and that the achievement of substantial decreases in unemployment (if they are achievable at all through amendment of the Fair Labor Standard Act) could be obtained only at the cost of a very large subsidy of employers in the fast food, retail and other low-wage industries by low-wage workers, or tax payers, or both * * *

> The purpose of the Fair Labor Standards Act was and is to establish a floor below which wages will not fall, a floor which is adequate to support life and a measure of human dignity. It is a laudable legislative effort to ensure a just wage in returned for a day's labor * * *
>
> That the minimum wage has not brought us to the Earthly Paradise may be a disappointment, but it should not be a surprise. That it has provided a working floor below which wages would have gone in its absence and have not gone because of it, suggests that it has done what it was intended to do. May that be said of each of us.

1987 testimony

The committee again received testimony and accompanying studies projecting significant adverse employment impact when it considered S. 837 during the 100th Congress. One study submitted by the U.S. Chamber of Commerce calculated 1.9 million jobs would be lost by 1995 under S. 837 as originally introduced. This study concluded that through the first 3 years ($4.65) there would be a 550,000 decline in employment, 113,000 or 339,300 of which would be teen jobs, and a .4% increase in the unemployment rate.

Another Chamber of Commerce study received by the Committee concluded that through the same three years of the bill ($4.65) total job loss would exceed 750,000, 420,000 of which would be teen jobs.

Another witness presented the conclusions of a study commissioned by the Retail Industry Task Force, which calculated that at a minimum wage of $4.65 "882,000 people would lose their jobs, 364,000 from the retail industry."

These projections of job loss are consistent with the previous projections by business organizations and economists in opposition to previous amendments to the Fair Labor Standards Act. Yet it is apparent from the employment and unemployment data following previous adjustment to the FLSA rate that the adverse employment consequences projected by these and other economic studies have never come to pass.

It is not surprising that the historic data on employment and unemployment do not suggest conclusions by economists plugging data into a model or a formula. Wage markets do not behave in the same manner as commodity markets vis-a-vis the economists' stock in trade, supply and demand curves. As Dr. Adams testified before this Committee:

> We visualize the labor market as one that is highly fragmented, not like the market for wheat and corn and potatoes, but rather, it is an individual relationship between workers with very specific qualifications and their employer. And in such a fragmented labor market, certain workers fall behind, lack bargaining power, lack information and are unable to achieve a market wage.

Similarly, it would not surprise the original authors of the FLSA that wage markets behave differently than commodities markets. The fundamental premise of those who authored the FLSA was that labor is not a commodity, and as a matter of public policy, should not be treated as such.

The differences between economic and business projections of adverse consequences and the subsequent actual employment data may have been best explained by Dr. Walter Galenson, in his testimony before this Committee in 1977:

> Economists are prone to make strong policy statements on the minimum wage, and one would have supposed that by this time, they would have had a firm supporting factual foundation. This is unfortunately not the case * * * One of the difficulties with most of these studies is that they are based upon macroeconomic data, and that heroic assumptions are necessary in order to distill out the effects of economic developments that are occurring simultaneously. The problem with arguments on both sides of the issue is that the major forces that determine the level of employment swamp any and probably minor effects that might be attributed solely to a change in the minimum.

Dr. Galenson's observations were supported in the hearings this Congress by Dr. Adams, who testified:

> I conclude by saying that our econometric estimates suggest that at worst, adjustment of the minimum wage to $4.65 an hour and indexing thereafter will have small effects on the GNP and employment and only moderate effects, up to .2% annually, on inflation. These are tiny imperceptible differences, and they will be overwhelmed by small changes in any number of more important variables that affect our economy * * *
>
> A ten cent increase in the price of gasoline will give you two-tenths of one percent on the inflation rate if you carry it through the model.
>
> A $10 billion change or reduction in government spending—$10 billion is not a large number—would give you approximately the same impact on unemployment as we get here.

1989 testimony

On March 3, 1989 Secretary of Labor, Elizabeth Hanford Dole, presented the Bush Administration's position on the minimum wage. The Secretary stated that the President would support a moderate increase in the minimum wage, culminating in $4.25 in 1992 as long as the increase was accompanied by a six month subminimum wage provision for all "new hires". In addition the Secretary advocated an expansion of the current small business exemption and an increase in the tip credit.

Secretary Dole also commented on S. 4. She predicted that the bill would cause a decrease of 650,000 job opportunities and that the bill would do little or nothing to assist the working poor, youths and minorities.

Several members of the Committee commended the Secretary and the President for presenting a proposal. The Chairman and several members also challenged the Secretary's testimony. They expressed their opinion that the 650,000 job loss estimates were unrealistically high and that the proposed subminimum "training"

wage actually provided for no training and that it would set forth too long a period of subminimum employment. Two members noted that the Department of Labor has estimated that most minimum wage jobs require less than thirty days of training.

B. NEED FOR THE LEGISLATION

The minimum wage was last adjusted by Congress in 1977, with the current $3.35 an hour taking effect on January 1, 1981. In the ensuing eight years, the purchasing power of the minimum wage has declined almost 38.5%. The $3.35 an hour in effect in 1981 is only worth $2.46 an hour in today's dollars. The minimum wage today represents 35% of the average hourly earnings, a decline from 46.2% in 1981, and from 55.4% in 1968. The original 25 cents an hour passed in 1938 represented a greater percentage of average hourly earnings than does $3.35 today.

In two-thirds of the states, basic welfare benefits provide greater cash income than does full time work at the current minimum wage. Opponents of the minimum wage point out that many minimum wage workers are not poor. The sad reality is that many of the poor cannot afford to work at the current minimum wage when not working can better enable these families to survive.

According to data provided to the committee this year by the Department of Labor, there were over 14 million hourly workers earning less than $4.65 an hour. While women make up about 45% of the labor force, they represented over 63% of those who earned less than $4.65 an hour. Blacks and Hispanics also represented significantly higher percentages of these low wage workers than they did of the workforce in general. Contrary to the assertions that most of these workers were just teens, only 27% of those earning less than $4.65 were teen-agers. Of hourly workers 65 years of age and older, 38% earned less than $4.65 an hour.

Over 6.5 million of these low-wage workers were full-time. Over 3.8 million were heads of households, and over 2.1 million of these worked full-time and were heads of households. 2.4 million hourly workers making less than $4.65 an hour were poor. 1.2 million of these workers were heads of households, supporting 2.1 million family members.

Passage of S. 4 would provide a cash infusion to these millions of workers without expanding federal outlays. It would restore the minimum wage, badly eroded over the last eight years, much closer to the levels maintained over the last 50 years. By increasing the mimimum to $4.65, work in most states will be a more attractive alternative than welfare benefits.

For the working poor, this adjustment to the minimum wage is long overdue and will prove to be an enormous benefit. For the non-working poor, this adjustment will provide an increased incentive to work. For those non-poverty workers laboring at the mimimum wage, the increase will also prove to be a significant benefit. For example, teens and young adults attempting to meet college expenses have witnessed over a 75% increase in private college tuition and over a 60% increase in public college tuition since the minimum was last adjusted in 1981. Seventy percent of middle-income students depend on their earnings for college expenses, and

since 1981, students have had to increase their borrowing by over 40%.

The historic data contradicts claims of significant adverse economic impact attributable to periodic adjustments in the mimium wage. Restoration of the minimum wage by enactment of S. 4 will in fact increase the earnings and reduce the poverty of millions of American workers, with no discernible adverse impact on our economy.

C. STATISTICAL TABLES

Past committee reports accompanying legislation to increase the minimum wage have included statistical tables provided by the Bureau of Labor Statistics and the Employment Standards Administration at the Department of Labor, which have proven to be useful references during previous deliberation and consideration of such legislation. The following tables have been provided by the Secretary of Labor, and the committee extends its thanks to the Secretary for her cooperation and assistance.

TABLE 1.—ESTIMATED NUMBER OF EMPLOYED WAGE AND SALARY WORKERS IN THE CIVILIAN LABOR FORCE CLASSIFIED BY THE STATUS UNDER THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY, UNITED STATES, SEPTEMBER 1988

[In thousands]

Industry division	Number of employed wage and salary workers in the civilian labor force			Nonsupervisory employees excluding outside sales workers	Number of nonsupervisory employees subject to the minimum wage provisions of the FLSA			Number of nonsupervisory employees not subject to the minimum wage provisions of the FLSA
	Total	Activities generally exempt under section 13(a)(1) of FLSA [1]			Total	Subject prior to the 1966 amendments [2]	Subject as a result of the 1966 and later amendments	
		Executive, administrative and professional personnel	Outside salesworkers					
All industries	110,986	20,793	2,865	87,328	79,150	50,372	28,778	11,043
Private sector	93,186	13,691	2,865	76,630	68,452	50,372	18,080	11,043
Agriculture [3]	1,724	89	.....	1,635	628	.....	628	1,007
Mining	740	94	.....	646	642	642	.....	4
Contract construction	5,660	568	6	5,086	5,069	4,221	848	23
Manufacturing	19,726	2,300	399	17,027	16,945	16,841	104	481
Transportation and public utilities	5,665	645	7	5,013	4,988	4,912	76	32
Wholesale trade	6,241	888	1,059	4,294	4,270	4,011	259	1,083
Retail trade	19,387	1,939	177	17,271	15,157	7,659	7,498	2,291
Finance, insurance and real estate	6,706	971	1,166	4,569	4,349	4,179	170	1,386
Service industries (except private households) [4]	25,951	6,197	51	19,703	15,474	7,907	7,567	4,280
Private households	1,386	.....	.....	1,386	930	.....	930	456
Public sector	17,800	7,102	.....	10,698	10,698	.....	10,698	.....
Federal Government	2,968	556	.....	2,412	2,412	.....	2,412	.....
State and local government	14,832	6,546	.....	8,286	[5] 8,286	.....	8,286	.....

[1] Section 13(a)(1) exempts from the minimum wage and overtime provisions of the Fair Labor Standards Act ". . . any employee employed in a bona fide executive, administrative, or professional capacity (including any employee in the capacity of academic administrative personnel, or teacher in elementary or secondary schools), or in the capacity of outside salesman . . . .". Included are all employees in the specified activities whether employed in covered or noncovered establishments.

[2] Relates to currently employed workers who would have been subject under criteria in effect prior to the 1966 amendments.

[3] Estimates for agriculture are based on average employment for the 10-month active season. For July 1988, a peak employment period, the estimate for total hired farm labor was 2,037,000; for nonsupervisory employment, 1,937,000; for subject employment, 729,000.

[4] Etimates for educational services relate to October 1988.

[5] Estimated employment subject to the minimum wage reflects the February 1985 Supreme Court decision in Garcia.

Source: U.S. Department of Labor, Emloyment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 2.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS EXEMPT FROM BOTH THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY SECTION OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1988

[In thousands]

Section of the act		Estimate [1]
	Exempt from minimum wage and overtime	7,884
6(f) and 7(l)	Domestic service employees working 8 hours or less or with earnings too low to be covered by social security.	266
13(a)(1)	Outside salesworkers	2,865
13(a)(2)	Retail and service establishments	3,415
13(a)(3)	Seasonal amusement establishments	77
13(a)(4)	Custom manufacturing in exempt retail establishments	8
13(a)(5)	Catching and processing fish and seafood	16
13(a)(6)	Agriculture	1,024
13(a)(7)	Employees exempt under section 14	NA
13(a)(8)	Small newspapers	23
13(a)(10)	Switchboard operators of small telephone exchanges	([2])
13(a)(12)	Seamen on foreign vessels	NA
13(a)(15)	Babysitters employed on a casual basis and companionship services	190

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.
[2] Less than 5,000 employees.
NA: Not available.

Note.—Sections 13(a) (9), (11), (13) and (14) have been repealed.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 3.—*Number of workers not subject to the minimum wage provisions of the Fair Labor Standards Act by industry, September 1988*

[In thousands]

All industries	[1] 11,043
Private sector	11,043
Agriculture	1,007
Mining	4
Contract construction	23
Manufacturing	481
Transportation and public utilities	32
Wholesale trade	1,083
Retail trade	2,291
Finance, insurance, and real estate	1,386
Service industries (except private households)	4,280
Private households	456
Public sector	
Federal Government	
State and local governments	

[1] Including 2,865,000 outside salesworkers.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 4.—NUMBER OF WORKERS NOT SUBJECT TO THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE INDUSTRY, SEPTEMBER 1988

[In thousands]

	Total	Partial exemption [1]	Full exemption or not covered [2]
All industries	16,354	1,094	15,260
Private sector	15,387	167	15,220
Agriculture	1,635	.....	1,635
Mining	10	.....	10
Contract construction	69	.....	69
Manufacturing	701	31	670
Transportation and public utilities	1,788	29	1,759
Wholesale	1,298	37	1,261
Retail trade	3,522	20	3,502
Finance, insurance and real estate	1,387	.....	1,387
Service industries (except private household)	4,425	50	4,375
Private housholds	552	.....	552
Public sector	967	927	40
Federal Government	59	59	
State and local government	908	868	40

[1] Includes workers who are exempt from premium payment for overtime for part of the year or whose workweek standard exceeds 40 hours per week.

[2] Includes workers who are not covered or are exempt from overtime for the entire year. Includes 2,865,000 outside saleworkers.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 5.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS PARTIALLY EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE SECTION OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1988

[In thousands]

Section of the act		Estimate [1]
	Partial overtime exemption	1,094
7(b)(3)	Independent bulk petroleum dealers [2]	37
7(k)	Federal, State, and local fire protection and law enforcement activities (including security personnel in correctional institutions).[3]	927
7(m)	Tobacco handling and processing incidental to auction sale [4]	23
13(b)(29)	Private sector amusement or recreational establishments located in national parks, national forests or National Wildlife Refuge System.[5]	20
13(h)	Cotton and sugar service employees [4]	25
13(i)	Cotton ginning [4]	48
13(j)	Processing sugar beets, sugar beet molasses or sugar cane [4]	14

[1] Estimated number of nonsupervisory employees incategories in which exemption applies.

[2] At least 1½ times the minimum rate for hours in excess of 40 per week and 1½ times the regular rate for hours in excess of 12 per day or 56 per week.

[3] 28 day work period with at least 1½ times the regular rate for hours in excess of 212 for fire protection activities and 171 for law enforcement activities.

[4] At least 1½ times the regular rate for hours in excess of 10 per day and 48 per week for a period of not more than 14 weeks.

[5] At least 1½ times the regular rate for hours in excess of 56 per week. Estimate excludes nongovernment employees providing services and facilities directly related to skiing who are exempt from the minimum wage requirements of the Fair Labor Standards Act.

NA: Not available.

Note.—Sections 13(b) (25) and (26) have been repealed. Due to the nature of the exemptions, sections 7(j) and 7(o) were not included. Section 7(j), which applies to hospitals and nursing homes, permits a 14 day work period with at least 1½ times the regular rate for hours in excess of 8 per day and 80 per the 14 day work period. Section 7(o), which applies to state and local governments, permits the use of compensatory time off in lieu of overtime at a rate of not less than one and one-half hours for each hour for which overtime compensation is due.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 6.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS FULLY EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE SECTIONS OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1988

[In thousands]

Section of the act		Estimate [1]
	Fully exempt from overtime only	4,221
7(i)	Commission salesworkers in retail or service establishments	560
7(n)	Charter activities of local transit employees	NA
13(b)(1)	Motor carriers	1,206
13(b)(2)	Railroads	291
13(b)(3)	Air transportation	457
13(b)(5)	Outside buyers of poultry, eggs, cream, or milk	(2)
13(b)(6)	Seamen	63
13(b)(9)	Announcers, news editors, chief engineers of small radio or television stations	26
13(b)(10)	Salesworkers, partsworkers, mechanics	670
13(b)(11)	Drivers and drivers' helpers paid on trip basis	(2)
13(b)(12)	Agriculture or irrigation	643
13(b)(13)	Farmworkers engaged in livestock auction operations	NA
13(b)(14)	Small country elevators in area of production	15
13(b)(15)	Processing maple sap into sugar or syrup	(2)
13(b)(16)	Transportation of farm products or farm harvesting employees	21
13(b)(17)	Taxicab drivers	21
13(b)(20)	Small fire protection or law enforcement agencies	40
13(b)(21)	Domestic service live-ins	96
13(b)(24)	Substitute parents for institutionalized children	NA
13(b)(27)	Motion picture theaters	75
13(b)(28)	Small loggers (less than 9 employees)	34

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.
[2] Less than 10,000 employees.
NA: Not available.

Note.—Sections 13(b) (4), (7), (8), (18), (19), (22) and (23) have been repealed.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 7.—RELATIONSHIP OF MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS, 1961–88

Year	Minimum wage	Ratio/AHE (percent)
1961 (September)	$1.15	49.1
1962	1.15	51.8
1963 (September)	1.25	51.8
1964	1.25	53.0
1965	1.25	50.8
1966	1.25	48.8
1967 (February)	1.40	51.9
1968 (February)	1.60	55.4
1969	1.60	52.6
1970	1.60	49.5
1971	1.60	46.4
1972	1.60	43.2
1973	1.60	40.6
1974 (May)	2.00	44.1
1975 (January)	2.10	46.4
1976 (January)	2.30	47.3
1977	2.30	43.8
1978 (January)	2.65	46.6
1979 (January)	2.90	47.1
1980 (January)	3.10	46.5
1981 (January)	3.35	46.2
1982	3.35	43.6

TABLE 7.—RELATIONSHIP OF MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS, 1961–88—Continued

Year	Minimum wage	Ratio/AHE (percent)
1983	3.35	41.8
1984	3.35	40.3
1985	3.35	39.1
1986	3.35	38.2
1987	3.35	37.3
1988	3.35	36.1
Average		46.0

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 8.—RELATIONSHIP OF PROPOSED MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS

Period	Average hourly earnings (private non-farm)	Proposed minimum [1]	Percent
Calendar year:			
1988	$9.29		
1990	9.95	$3.85	38.7
1991	10.30	4.25	41.3
1992	10.66	5	43.6

[1] The first year increase of 50 cents an hour becomes effective Jan. 1, 1990, and is followed by two increases of 40 cents an hour effective Jan. 1, 1991, and Dec. 31, 1991.

Note.—Gross average hourly earnings for the years 1989–92 are projected on the basis of an annual increase of 3.5 percent.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

IV. Hearings

The Committee on Labor and Human Resources held three days of public hearings on minimum wage legislation in the 100th Congress: June 10, 1987, July 17, 1987, and July 23, 1987. The following persons and organizations appeared as witnesses and presented oral and written testimony:

JUNE 10, 1987

The Honorable William E. Brock, U.S. Secretary of Labor, Washington, D.C.

Ms. Rena Blankenship, New Castle, Virginia.

Ms. Shirley Slagle, Kittanning, Pennsylvania.

Mr. James G. O'Hara, Chairman of the Federal Minimum Wage Study Commission, Washington, D.C.

Mr. Arthur Flemming, Citizen's Committee for a Just Minimum Wage, Washington, D.C.

Mr. William Stone, U.S. Chamber of Commerce, Washington, D.C.

Mr. Ronald Sarisin, Minimum Wage Coalition to Save Jobs, Washington, D.C.

Ms. Virginia McCormac, President of Seattle Goodwill, Seattle, Washington.

JULY 17, 1987

Dr. F. Gerard Adams, Professor of Economics and Finance, University of Pennsylvania, Philadelphia, Pennsylvania.

Dr. David H. Swinton, Southern Center for Studies in Public Policy, Clark College, Atlanta, Georgia.

Dr. Finis R. Welch, Professor of Economics, UCLA, Los Angeles, California.

Dr. John R. Glennie, Vice-President, Robert R. Nathan Associates, Inc., Washington, D.C.

JULY 23, 1987

Mr. Lane Kirkland, President, AFL-CIO, Washington, D.C.

Mr. Jay Mazur, President, International Ladies Garment Workers Union, New York, New York.

Mr. John Sweeney, President, Service Employees International Union, Washington, D.C.

Mr. Jacob Scheinkman, President, Amalgamated Clothing and Textile Workers Union, New York, New York.

Mr. Mathew A. Runci, Manufacturing Jewelers and Silversmith's of America, Providence, Rhode Island.

Mr. Walter Ellis, Jr., President, New Jersey Farm Bureau, Trenton, New Jersey.

Mr. Douglas Fontaine, American Hotel and Motel Association, Pascagoula, Mississippi.

The following persons and organizations provided written testimony for the record during the course of the hearings:

JUNE 10, 1987

Barry, Hon. Marion, Jr., Mayor, Washington, D.C.

Coalition of Automotive Associations (CAA).

Cooney, David M., Rear Admiral, USN (Ret.), president and chief executive officer, Goodwill Industries of America, Inc.

Keyserling, Mary Dublin, consulting economist, on behalf of the National Consumers League.

National Grocers Association.

National Small Business United (NSBU).

Roosevelt, James, former Congressman and chairman of the National Committee to Preserve Social Security and Medicare.

Schreiber, G. Richard, president, National Automatic Merchandising Association.

Wilson, Donald T., director, government relations, National Tire Dealers and Retreaders Association.

JULY 17, 1987

Williams, Walter E.

JULY 23, 1987

American Jewish Congress.

Hotel Employees and Restaurant Employees International Union.

Joseph, Joel D.
National Federation of Independent Business.
Wynn, William H., international president, United Food and Commercial Workers International Union (AFL–CIO).

MARCH 3, 1989

An additional hearing was held at the request of several members of the committee on March 3, 1989 to hear the views of the Administration as to the appropriate level of the minimum wage and the Administration's proposal on a "training" wage. The Honorable Elisabeth H. Dole, Secretary of Labor, presented the Administration views.

V. Committee Views

A. THE PROPOSED INCREASE IN PERSPECTIVE

The current minimum wage represents the lowest percentage of average hourly earnigns since 1949. Over the fifty year history of the FLSA, Congress has adjusted the minimum wage to maintain a level roughly half of the average hourly wage in the economy. Today the federal minimum is equal to only 34.4% of the average hourly wage. According to the Department of Labor, the increases proposed in S. 4 will bring the minimum to less than 42% of the average wage by 1992.

It is the committee's view that these modest step increases, the first since the minimum wage was increased to the current $3.35 in 1981, are essential to restore the vitality of the FLSA and to improve the lives of millions of low-wage workers. The historic evidence amply justifies the committee view that the proposed increases will have no discernible adverse impact on the nation's economy.

For fifty years Congress has maintained and expanded this public policy of a wage floor below which no one should be paid. In the last fifty years this country has become the leading economy of the world, and has done so with this policy that no full-time worker should be condemned to a lifetime in poverty. The economic well-being of our nation's lowest paid workers has been the cornerstone on which much of our relative prosperity has been built, as well as the keystone of our political stability.

Restoring the lost purchasing power to the minimum wage will improve the lives of the 15 million of our nation's lowest paid workers, a disproportionate number of whom are women, blacks, and other minorities. The vitality of the American work ethic for our nation's low-wage workers is threatened when full-time work does not enable those workers the measure of decency and dignity that is the promise of the Fair Labor Standards Act, and which is the essence of the American dream.

B. EMPLOYMENT AND UNEMPLOYMENT

The minimum wage debates have always contained assertions that increasing the wage will lead to increased unemployment and decreased employment. Yet, the historical record shows that in each year following an upward adjustment in the minimum wage,

except 1975 which was a recession year, employment has increased and in the great majority, unemployment decreased.

[In percent]

	Increase in minimum	Unemployment—	
		Before	After
Year:			
1949	87	5.9	5.3
1955	33	4.4	4.1
1961	15	6.7	5.5
1966	30	3.8	3.6
1974	25	5.6	7.6
1977	10	7.1	6.1
1982	0	7.6	9.7

More recent evidence against claims that the minimum wage causes unemployment is provided by the experience of states that have raised their minimum higher than the federal minimum. Since 1981 ten states have raised their minimum wage above the federal wage, yet, in all these states, except Alaska during the recession year of 1982, employment increased and unemployment decreased.

State	Minimum	Employment—		Unemployment (percent)—	
		Before	After	Before	After
	1982	1982	1983	1982	1983
Alaska	$3.85	190,000	210,000	9.3	10.3
	1987	1986	1987	1986	1987
Connecticut	$3.75	1,673,000	1,695,000	3.8	3.3
	1988	1987	5/1988	1987	5/1988
Hawaii	$3.85	495,000	515,200	3.8	2.9
	1986	1985	1987	1985	1987
Massachusetts	$3.55	2,931,000	2,987,000	3.9	3.2
	1988	1987	5/1988	1987	5/1988
Minnesota	$3.55	2,137,000	2,281,000	5.4	3.8
	1988	1987	5/1988	1987	5/1988
New Hampshire	$3.55	573,000	588,800	2.5	2.3
	1987	1986	1987	1986	1987
Rhode Island	$3.65	488,000	500,000	4.0	3.8
	1987	1986	1987	1986	1987
Vermont	$3.55	278,000	285,000	4.7	3.6

California raised its minimum to $4.25 on July 1, 1988. Connecticut raised its minimum to $4.25 on October 1, 1988. New Hampshire raised its minimum to $3.65 on January 1, 1989. Minnesota raised its minimum wage to $3.85 on January 1, 1989 and will raise it to $3.95 by January 1, 1990. Maine raised the state minimum to $3.75 on January 1, 1989 and will raise it to $3.85 on January 1, 1990. Pennsylvania raised the minimum to $3.75 in February 1989. Washington raised its minimum to $3.85 on February 1, 1989 and will raise it to $4.25 on Janaury 1, 1990.

During the consideration of minimum wage legislation last Congress, the committee received three major studies on the job loss impact of raising the minimum wage: Nathan Associates, National

Chamber Foundation, and the Wharton based analysis of the Economic Policy Institute. These were presented in the June and July 1987 Senate hearings on amending the Fair Labor Standards Act of 1938.

These studies were based on the original 1987 Senate bill which contained increases to $3.85, $4.25, $4.65, and 50% of the average wage in 1991 (according to DOL projections approximately $4.95 in the fourth year).

The study by the National Chamber Foundation is the most unreliable of the three mentioned. It relied on the outdated statistical relationships summarized by Brown, Gilroy, and Kohen in their 1982 publication concerning the employment effects of the minimum wage. The study also failed to account for the declining percentage of the workforce made up by minimum wage workers, ignored the decline in the supply of teenage and young adult labor, and did not consider states which have increased their state minimum wage above the federal minimum wage.

The Chamber study presented in their 1987 testimony relies on a formula which links a 10% increase in the minimum with a .5% to 1.5% decrease in teenage employment. Yet this relationship was determined over the period of the mid-1950's to the late 1970's, a time when the minimum wage was, on average, about one half of the minimum wage. Today the minimum wage is only about 34.4% of the average wage. This larger gap between the minimum and the average wage renders the old relationship invalid. In his 1987 testimony Dr. F. Gerard Adams pointed out that "the larger the gap, the fewer individuals directly affected by the increase in the minimum wage and the less the impact on the average wage. Moreover, the larger the gap, the less is likely to be the impact of the ripple effect, as other wages are adjusted in sympathy."

There is another reason why the relationship relied upon by the Chamber is no longer valid. David Luskin, while working at the Department of Labor, presented a paper in which he conducted the statistical analysis relied upon by the Chamber. Luskin, however, incorporated the changed demographics and the lower relative minimum wage. He found that given this new data there was, for the most part, no longer any statistically significant relationship between an increase in the minimum wage and a decline in employment. What this means is that one can no longer rely on the outdated conclusions of the previous studies. His results are not surprising given that there will be over 1.5 million less teenagers and young adults in this country by 1991. With labor force participation rates of 54% and 77% respectively, there will be nearly 500,000 fewer teens (16–19 years) and almost 600,000 fewer young adults (20–24 years) in the labor force by 1991. The Chamber conclusion, that as a result of the minimum wage increase there will be 750,000 fewer jobs after the first three years, is neither supported by historic experience nor the experience of states with higher minimums. However, there may well be less teens employed, not due to the minimum wage, but due to the fact that there will be over 1,000,000 less young workers aged 16–24 by 1991.

The conclusions of John Glennie of Nathan Associates similarly ignore the minimum wages of states, the supply of teenage labor, the percentage of the workforce employed at the minimum wage,

and the questionable "consensus" outlined previously regarding the relationship between raising the minimum wage and the loss of jobs. The methodology by which Mr. Glennie reached his conclusions was not available in his prepared statement. However, in his verbal testimony Mr. Glennie indicated his reliance on "the body of economic literature" for his conclusion. There is little doubt that he was referring to the economic consensus expressed by Brown, Gilroy, and Kohen in their 1982 article regarding the effect of an increase in the minimum wage on employment. Yet, it is this very literature which is no longer valid given the larger minimum wage gap, the changed demographics, and the falling percentage of the workforce made up of minimum wage workers.

The conclusions of Dr. F. Gerard Adams on the results of the Wharton model analysis of S. 837 are the least inaccurate of the three studies. The Wharton model is one of the best known models, and has been relied upon extensively by a great number of government agencies and businesses over the last twenty years.

The Wharton model estimated a .05 percentage point increase in the unemployment rate, if the wage were increased to $4.65 by 1990. In terms of today's labor market, .05% unemployment would be approximately 50,000 to 60,000 jobs. The study did not formally address the question of jobs not created, but Dr. Adams estimated the effect on employment to be what amounts to .0017% of the current labor force.

There are two observations which should be kept in mind. First, these figures include indexing which would raise the minimum to $4.95 in 1991. The bill under consideration would raise it to only $4.65 with no indexing. Second, given the real wage gains to 14 million (13% of the labor force) making less than $4.65 an hour, the estimated number of jobs not created is a relatively small price to pay. The small number of jobs which might not be created, moreover, is dwarfed by the projected increases in the labor force. According to the Congressional Budget Office, the labor force will grow by 4.6 million between 1988 and 1991. The job loss the Wharton study attributes to the minimum wage increase represents just .04% of this growth.

Yet as reported in *Business Week,* October 19, 1987, even the Wharton estimate of job loss is too high. This *Business Week* article, which describes the common flaws of all the macro-economic model estimates of job loss, notes, that, "the fewer minimum wage jobs there are, the less impact on employment if the minimum wage rises." In fact, the number of people working at or below the minimum wage has come to represent a smaller and smaller percentage of the hourly workforce, from 15% in 1981, to 8.8% in 1986, to 7.9% in 1987.

At the request of the Chairman, the Congressional Budget Office provided the committee with an estimate of employment impact under last year's bill. CBO based its estimate on a review of available economic studies, and estimated the bill would reduce employment through 1991 a few tenths of one percent, or approximately 175,000 to 350,000 jobs.

As CBO noted in its letter year to the Chairman, "any attempt at quantifying the employment impact of increases in the minimum wage is subject to a wide margin of error. If anything, such

estimates are now even more uncertain than usual because of special circumstances."

The special circumstances not taken into account by CBO in arriving at its quantitative estimate include the following factors. CBO did not quantitatively subtract from their estimate the jobs in the 12 jurisdictions in which the minimum wage already exceeds the federal minimum, and in most cases exceeds the first year or two of the proposed rates contained in the legislation. Other factors not accounted for in the numerical estimate of job loss include the significant decline of the teen and young adult population between now and 1992, and the continued decline in the percentage of hourly workers who are paid the minimum.

Finally, the CBO was unable to provide an estimate of the effect on the Wharton estimate given the two year lag in the effective date of the increases and the lower rates established by S. 4.

All these estimates and projections of employment loss must be put in both their historical and current contexts. First, the actual impact of past increases never matched the economists' projections.

Second, even if the current projections are assumed to be correct, they must be applied in the context of the projections for the labor force and for employment growth through 1992. The Department of Labor projects that labor force growth will not keep up with projected job growth through 1992. Even assuming the most extreme projections of job loss, the economy will be creating more jobs than workers in each year of the proposed increase in the minimum wage contained in S. 4.

Put in the context of teens and young adults, the focus of concern for many opponents of the minimum wage increase, the numbers are more startling. Even if 80% (280,000) of the "lost jobs" projected by CBO were for teens and young adults (16–24), by 1992 there will be more than a million less 16–24 year olds. Hence, demand for 20–24 year olds would outstrip the supply of these young workers by over 800,000.

This youth labor shortage has not gone unnoticed by low-wage employers. In a study conducted by Arthur D. Little Inc. for the National Restaurant Association, A.D. Little concluded that due to these demographic changes, the food service industry alone will face a potential labor shortage of 1.1. million workers by 1995.

C. INFLATIONARY IMPACT

Many critics of the minimum wage argue that it fuels inflation and that workers who benefit from the increase in the minimum wage will receive no real gain due to the increase in the price of the goods they purchase. This type of reasoning is incorrect and ignores a number of important points.

The Congressional Budget Office summarized estimates of this inflationary impact from the results of the Minimum Wage Study Commission and the work of Dr. F. Gerard Adams. The impact is assumed to be between .2 and .3 percentage points per year. Dr. Adams likened this to the system wide effects of a 10 cent increase in the price of gasoline.

This estimate is high for many of the same reasons that the job loss estimates were overstated. For example, since the gap between

the current minimum and the average wage is much greater than it was when these estimates were made, the impact today would be less. A lower minimum wage, in relation to other wages in the economy, means a lesser inflationary "ripple" effect on these other wages as some are adjusted to maintain wage differentials.

Because the proportion of minimum wage workers has been falling, the inflationary impact of the minimum wage will be diminished. Common sense dictates that the fewer workers there are at the minimum wage, the less will be the increase in labor costs and prices resulting from higher payments to minimum wage workers.

With fewer teenage and young adult workers, employers would have been forced to bid up wages anyway to attract the scarce labor. Of course, one of the problems with a fragmented labor market and one of the reasons behind the need for a federal wage floor is that there would be many disadvantaged workers who would not benefit from those pressures to raise wages. But there would be a good number of workers currently at or near the minimum wage whose bargaining power would be increased by this restriction in labor supply.

Many of the workers who would receive increases under S. 4 are in health care and nursing home occupations. Despite the potential impact on Medicaid rates paid to long term care providers, CBO did not estimate additional costs to the Federal Government. Individual states have rate-making authority for nursing home care under the Medicaid statute, and states are required to make assurances to the Secretary of Health and Human Services that their rates are "reasonable and adequate." Section 1902 (a)(13) of the Social Security Act requires that states take into account the costs that nursing homes must incur to provide care and services in conformity with all applicable state and federal laws. Although the FLSA is not referred to specifically in that provision, the committee recognizes that wage levels required by the FLSA meets the scope of federal statutes which must be taken into account under this section of the Social Security Act.

D. MINIMUM WAGE WILL HELP THE WORKING POOR

The committee strongly disputes the arguments of the opponents of this legislation who claim that the bill will have little impact or a negative impact on the working poor. The proposed increase in the minimum wage will have a dramatic positive impact on the working poor. A recent study by Ronald B. Mincy of the Urban Institute, published in May of 1988, estimate that if the minimum wage were increased to $4.65, with current levels of coverage and compliance, the poverty gap (the difference between the actual incomes of the poor and the poverty level) would decrease by 14%, and the reduction in the number of poor families with low-wage workers would be 9.3%. This would mean a decrease of 206,000 in the number of poor families with a low wage worker. This decrease in poverty takes into consideration the mid-range disemployment effects.

This decrease in poverty among the working poor is especially important when we consider that the numbers of working poor have increased dramatically since 1978. In fact, the number of

people who worked full-time year-round but remained poor grew 43% between 1978 and 1987. Two things are clear: the working poor will benefit a great deal from this legislation, and the working poor are far more numerous and in need than they were when we last raised the minimum wage. The problem of the working poor, those Americans struggling to stay off welfare and work for their living, will be addressed, at least in part, by S. 4.

E. MINIMUM WAGE AS A WORK INCENTIVE

The committee intends that the proposed increase in the minimum wage will have positive effects even on those not currently employed. The Committee projects that increasing the minimum wage will provide increased incentive for individuals receiving public assistance to leave the welfare rolls and take employment.

The basic tenets of economics suggest that if we want to encourage individuals to accept one form of support (work) over another form of support (welfare or other forms of public assistance) the way to make that happen is to increase the rewards related to work. The committee believes that this means "making work pay." Certainly this is the premise of the Earned Income Tax Credit.

While some might be tempted to argue that the reverse is true—that we ought to decrease welfare payments—this approach has already been tested. Real AFDC benefits have declined 23% between 1978 and 1988, but poverty increased dramatically over this same period (from 11.4% in 1978 to 13.5% in 1987). In 1989 the maximum combined AFDC and food stamp benefit for a family of three was lower than the poverty threshold in all but two states. Decreasing public assistance payments to American families would almost certainly lead to an increase in homelessness and an increase in already troubling rates of hunger and malnutrition among this nation's children. Decreasing public assistance benefits is not an option, but increasing the benefits that accrue to one who works is an option, and is good policy. The committee recommends the proposed increase in the minimum wage, not only as a means of lifting working families out of poverty, but also as a means of inducing welfare recipients to choose work as an alternative to welfare.

F. SMALL BUSINESS THRESHOLD TEST

It is the view of the committee that this increase in the minimum wage to account for the eroded value of the wage should be accompanied by a commensurate increase in the small business dollar threshold for coverage. Under S. 4 as introduced, the retail/service enterprise test was increased from $362,500 to $500,000. In committee, a revised enterprise test was adopted, almost identical to the provision sought by the Administration. Under the small business test adopted by the committee, the test for small business enterprises is altered to a uniform $500,000 in gross annual sales, eliminating several of the separate tests. Existing provisions regarding public agency coverage and family business coverage remain unchanged from existing law.

The new provision would continue the current wage, overtime and child labor protections for workers previously covered under

the separate tests, and would bring into coverage by the Act of approximately an equal number of employees exempted by a separate provision of the Act.

It is the committee's view that this more streamlined version of a threshold test, accompanied by the continued protection of workers currently covered and the elimination of the separate higher tests elsewhere in the Act, goes a long way toward simplifying this section of the Act. Small business will be afforded an increase in their threshold test commensurate with the increase in the minimum wage.

G. PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

Section four of the substitute reported by the committee makes several changes to S. 4's original provision, although it achieves the same goal. The Virgin Islands are brought to the full mainland rate, and American Samoa continues to be subject to the industry committee mechanism of the Act. For the first time in the history of the Fair Labor Standards Act, a substantial majority of workers in Puerto Rico (including approximately 60% of workers in manufacturing industries) will be brought to full inclusion in the increases specified for the U.S. generally in Section 6(a)(1). All hotel and restaurant workers, and all other workers in industries where the average hourly wage is $4.65 or higher, will receive the increases on the same schedule as other U.S. workers. No extended phase-in provisions, as were included in both the 1974 and 1977 Amendments, are provided for these employees.

Special Industry Committees, which have been a feature of the Act since 1938, are eliminated entirely with respect to Puerto Rico and the U.S. Virgin Islands. Authority for these committees, and for the promulgation of wage orders at less than the Section 6(a)(1) rates, is retained only for American Samoa. However, the Puerto Rico Minimum Wage Board recently was granted authority to raise wages above the federal minimum, which it already has done in several industries, and this amendment does not preclude further increases by this Board to levels above those federal rates.

Employees in very low wage industries (where average wages are well under one-half of the U.S. average), will be guaranteed full inclusion in the Section 6(a)(1) rates under a schedule tailored to their particular circumstances, as follows:

For industries in which the average hourly wage is between $4.00 and $4.65, the full section 6(a)(1) rate ($4.65 in S. 4) will be delayed two years, to take effect on January 1, 1994. In each of the intervening years, beginning on January 1, 1990, the employees will be guaranteed increases in equal cents per hour amounts, rounded to the nearest five cents.

For the lowest wage industries, those where the average hourly wage is less than $4.00, the full increase will be delayed three years to take effect on January 1, 1995 with equal increases each year beginning January 1, 1990. With respect to certain public employees, including those of Puerto Rico's Municipalities, brought under coverage by Public Law 99–150 and subject to the same less than $4.00 per hour average wage ceiling, the phase-in period will be extended by one additional year, to take effect on January 1,

1996. Again, the full rate will be phased in through equal annual increments beginning January 1, 1990.

For any industry to qualify for an extended period within which to reach the $4.65 minimum, Puerto Rico will be required to furnish official survey data substantiating that any industry's average hourly wage is below either the $4.65 or the $4.00 threshold levels specified in the substitute amendment. At the present time, the only such data available are produced in Puerto Rico's annual Census of Manufacturing, but the government intends to collect additional data where appropriate. An industry must be classified through the four digit Standard Industry Code (SIC) designation where available, or by a comparable level of specificity. Such data must be complied and submitted for examination to the federal Department of Labor prior to January 1, 1990 to qualify for any of the extended compliance periods.

For purposes of the public employees described in section 4(c)(4) of the bill, the average wage to be considered is for specific categories of employment in distinct entities of the Commonwealth or its municipalities, or for specific employment classifications, such as non-supervisory maintenance, clerical, and groundskeeping.

H. TIP CREDIT

The Committee adopted an amendment which would increase the maximum allowable tip credit available under the Act from the current 40% to 45% in the first year of the minimum wage increase and to 50% thereafter. This amendment will not result in a decrease in the statutory minimum for any tipped employee. A tipped employee will receive the full increase in the minimum wage, but the percentage of compensation attribututable to tip income, relative to employer-paid cash wages, will increase.

For example, under the current 40% credit, the statutory minimum for the cash portion of tipped employees' hourly earnings would have increased from $2.01 per hour to $2.79 per hour by 1992. In addition, the tip credit allowable to employers would have increased from $1.34 per hour to $1.86 per hour. As a result of the provision adopted by the committee, by 1992, tipped employees' minimum wage would be at least $2.33 in employer-paid cash wages and up to $2.32 in tip income. As is the case under current law, if the employee is receiving tips in an amount less than the amount credited, the employer is required to pay the balance so that the employer receives at least the minimum wage with the defined combination of wages and tips.

I. THE ADMINISTRATION'S POSITION

On March 3, 1989, Secretary of Labor Elizabeth Hanford Dole presented the Bush Administration's position on the minimum wage. The Administration's position, as presented in the Secretary's testimony, is:

> An increase of 26.8% over three years, that is, 30 cents a year to an ultimate $4.25 and no higher;
>
> A meaningful training wage that would apply universally to all new hires, whether or not this is their first job, for

six months at the $3.35 level of the current minimum wage;

Liberalizations of the current tip credit (from 40% to 50%) and small business exemption (from $362,500 to $500,000, which should be extended to all businesses, not just retail and service establishments).

It is the committee's view that the Administration's proposal is seriously deficient in several respects. First, the level of $4.25 is too low. Since 1981, there has been over 38% erosion of the purchasing power of $3.35, and increases less than this percentage would actually be a reduction in the real minimum wage.

A more distrubing aspect of the Administration proposal is their "training wage." The Administration proposes that employers be granted the discretion to pay a subminimum wage, of $3.35, to all new hires for a period of six months. It is unclear as to why the Administration refers to this subminimum as a "training" wage; the subminimum would require absolutely *no* training, it would apply to industries that offer little or no training, and it would apply to emplolyees who have already been trained in the skills required to perform their Jobs.

The Department of Labor provides detailed data on training time periods for thousands of occupations in their Dictionary of Occupational Titles. Almost all of the occupations found at or near the minimum wage require training periods of no more than thirty days. Recently the General Accounting Office criticized the programs under the Job Training Partnership Act for granting training contracts for diswashers, food service workers, custodians, and laundry workers at twice the DOL recommended 30 day periods.

The committee is concerned that a six month subminimum option would give substantial economic incentive to pay new employees at the subminimum wage regardless of their skills or abilities, without the remotest relationship to actual training provided or necessary.

Another concern is raised when one considers the turnover rate in most minimum wage jobs. It is the committee's view that the many of minimum wage workers change jobs more often than every six months. For example, the fast food industry, which employs millions at or near the minimum wage, has an annual turnover rate in excess of 300%. Under the Administration proposal, the average worker in these or many other minimum wage jobs would never receive the proposed increase.

Finally, the Administration's subminimum wage provision would, the committee believes, provide substantial incentive for employers to cause unnatural turnover; that is that employers might fire employees or cause such employees to quit at or near the expiration of the six month subminimum wage eligibility.

THE ADMINISTRATION'S JOB LOSS ASSUMPTIONS

In her testimony before the committee, the Secretary presented the Department of Labor's assumptions about job loss under S. 4. These assumptions are seriously flawed and must be called into question.

The Secretary stated that S. 4 would result in the loss of 650,000 job opportunities. That estimate was based on the assumption that a 10% increase in the minimum wage would result in a 2% decrease in job opportunities for teenagers and a 0.25% decrease in jobs for young adults. These assumptions are overstated and outdated.

The assumptions are based on a range of studies, some dating back to the 1960s. The Minimum Wage Study Commission established by Congress did, in fact, review various studies and established a mid-point job loss estimate based on these studies. However, the Commission's own economists found that a 1% (not the 2% assumed by DOL) decrease in job opportunities was more realistic. moverover, the Commission only used data collected through 1979. Data is now available through 1986.

Under the direction of Professor Charles Brown, one of the Commission's original economists, Alison Wellington of the University of Michigan has replicated the Commission's work using the data updated through 1986. The Wellington study estimates the teenage job loss associated with a 10% increase in the wage would equal .6% and that the wage increase would have no significant effect on the employment of young adults (ages 20–24).

In addition to using outdated disemployment effect estimates, the Administration ignored the relationship between the minimum wage and the average wage. In virtually all job loss studies, the accepted methodology is to estimate the impact on the change in the minimum relative to the average wage, an increase of 21.2% under S. 4. The Labor Department made its job loss estimates based on the dollar increase of the minimum wage—not on the increase relative to the average wage, inflating the figure by some 83%.

The Center on Budget and Policy priorities has estimated that the job loss resulting from S. 4, utilizing the current disemployment effects and the 21.2% increase (following the adjustment method used by the Congressional Budget Office), is 90,000—much lower than the estimates offered by the Department of Labor.

Even this lost job opportunities number is too high. First of all it does not consider the proposed increase in the small business exemption. Secondly, and most importantly, the estimate does not take into consideration the fact that 12 States (and the District of Columbia) have already increased their state minimum wages above the federal level. This state initiative will reduce or virtually eliminate the job loss effects of S. 4 in these states.

In her oral testimony, the Secretary of Labor criticized the Wharton macroeconomic model simulation results Dr. Gerard Adams provided for the committee last Congress on the impact of a $4.65 an hour minimum wage. Her criticism claimed macroeconomic models don't factor in all the variables necessary in calculating job loss. Fortunately, Dr. Adams also provided the committee with regression analysis to test the model simulation, and came up with "largely compatible results" (testimony of Dr. Adams before the committee, July, 1987). And, as noted earlier in this section, Business Week found the Wharton model's estimates of job loss too high due to other variables not factored in.

In summary, the committee finds that the Administration's job loss estimates are severely overinflated. According to the most

recent data and relevant information, job loss resulting from S. 4 will be less than 15% of the job loss projected by the Administration.

VI. Committee Action

The Committee on Labor and Human Resources met on March 8, 1989 to consider S. 4, the Minimum Wage Restoration Act of 1989.

The Committee agreed by voice to adopt an amendment offered by Senators Simon and Kennedy regarding Puerto Rico, the Virgin Islands, and American Samoa.

The committee adopted by voice an amendment offered by Senator Harkin increasing the tip credit provision from 40% to 50% by 1991.

The commiteee adopted voice an amendment offered by Senator Jeffords adjusting the small business exemption threshold to $500,000.

The committee rejected the Administration substitute offered by Senator Hatch which would have raised the minimum wage to $4.25 in three years; provided for an 80% subminimum for new hires for the first six months; increased tip credit to 50%; increase small business exemption threshold to $500,000. Rejected by roll-call vote, 6–10.

YEAS	NAYS
Hatch	Kennedy
Kassebaum	Pell
Jeffords	Metzenbaum
Coats	Matsunaga
Thurmond	Dodd
Cochran	Simon
	Harkin
	Adams
	Mikulski
	Durenberger

The committee voted to adopt and report S. 4 as amended, as an amendment in the nature of a complete substitute, by roll call vote, 11–5.

YEAS	NAYS
Kennedy	Hatch
Pell	Kassebaum
Metzenbaum	Coats
Matsunaga	Thurmond
Dodd	Cochran
Simon	
Harkin	
Adams	
Mikulski	
Jeffords	
Durenberger	

VII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 9, 1989.

Hon. Edward M. Kennedy,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 4, the Minimum Wage Restoration Act of 1989, as ordered reported by the Senate Committee on Labor and Human Resources on March 8, 1989. We estimate that enactment of S. 4 would result in no direct costs to the federal government. There is a potential for authorization increases in federal contracts and certain other federal programs, however, but data limitations preclude estimating the amounts.

S. 4 would increase the federal minimum wage in three steps between now and January 1, 1992. The new levels would be $3.85 per hour for the year beginning January 1, 1990; $4.25 per hour for the year beginning January 1, 1991; and $4.65 per hour after December 31, 1991. S. 4 also would (1) increase the small business enterprise threshold for the minimum wage and other labor standards from the current level of $362,500 in gross sales to $500,000, (2) change the minimum wage guidelines for Puerto Rico, the Virgin Islands, and American Samoa, and (3) increase the tip credit of the applicable minimum wage from the current 40 percent to 45 percent through December 31, 1990 and to 50 percent after this date. The tip credit is the maximum amount of tips an employer can use to reduce employee wages and still be in compliance with minimum wage laws.

Federal Government.—Increasing the minimum wage could increase the administrative and enforcement caseloads within the Wage and Hours Division of the Employment Standards Administration at the Department of Labor (DOL). While this could result in higher costs to the federal government, there is no data available for estimating the increase.

To the extent that federal contractors use minimum wage labor, federal costs could increase as a result of enactment of S. 4. However, there is no data available with which to estimate this effect. Increases in the minimum wage may also affect service levels in several federal programs because participants' pay is based on the minimum wage. Programs that may be affected are the Summer Youth Employment program, Community Service Employment for Older Americans, and the College-Work Study program. In these programs, the increase in wages might have to be offset by lowering the number of participants.

The changes to the small business enterprise threshold, the treatment of Puerto Rico, the Virgin Islands, and American Samoa, and the tip credit are estimated to have no cost effects on the federal budget.

State and local governments.—To the extent that state and local governments have workers who are paid at the current minimum wage or between the current minimum wage and the higher rates prescribed in S. 4, state and local government wage costs could in-

crease with the enactment of S. 4. There is no data with which to estimate the magnitude of these costs. Furthermore, the effects will vary from state to state. For example, there are now 16 states that have set minimum wage levels above the federally mandated $3.35 per hour. In these states, the new federal minimum wage rates could have less of an effect than in states in which the minimum wage is at the current federal level.

If you need additional information, we will be pleased to provide it. The CBO staff contact is Michael Pogue (226–2820).

Sincerely,

ROBERT D. REISCHAUER,
Director.

VIII. REGULATORY IMPACT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 4 is made:

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OF CLASSIFICATIONS

It is estimated that S. 4 would not regulate any additional number of individuals or businesses, as it does not contain any significant net expansion of coverage by the Fair Labor Standards Act. Section 3 of the bill adjusting the enterprise test to $500,000 would result in approximately the same number of individuals added to that exempt classification as those added to the coverage of the Act by removal of the section 13(a)(2) and 13(a)(4).

B. ECONOMIC IMPACT OF THE INDIVIDUALS, CONSUMERS, AND BUSINESSES AFFECTED

The economic impact of the legislation is relatively small in the aggregate and imperceptible to the individual, according to one expert testifying before the committee. It is estimated that there are over 14 million employees out of a labor force of over 115 million earning less than $4.65 an hour, and most of these would be covered employees receiving increases over the three years ranging from $.05 an hour to $1.30 an hour.

According to testimony received by the committee, these wage increases could result in an additional. 2% added to the Consumer Price Index. One expert informed the committee the inflationary impact on consumers of the minimum wage bill would be the equivalent of a 10 cent increase in the price of gasoline.

While over 90% of employees are covered by the FLSA and would be entitled to the new minimum wage rates, most businesses already pay in excess of the rates established by this bill, and will not realize a measurable impact.

C. IMPACT OF THE ACT ON PERSONAL PRIVACY

This legislation will have no impact on personal privacy.

D. ADDITIONAL PAPERWORK, TIME, AND COSTS

This legislation will result in some additional paperwork, time and costs to the Department of Labor, in upgrading their FLSA regulations to reflect the amendments to the Act and in preparing, printing, and distributing new minimum wage notices to covered employees. There will be no additional paperwork or recordkeeping for covered employers, other than adjusting payrolls if current compensation is below the new minimum rates, and in replacing existing minimum wage notices with new ones reflecting the new rates.

IX. Section-by-Section Analysis

SECTION 1—SHORT TITLE

Section 1 provides that the short title of S. 4 is the Minimum Wage Restoration Act of 1989.

SECTION 2—RESTORATION OF MINIMUM WAGE

Section 2 amends paragraph 1 of section 6(a) of the FLSA to provide the applicable minimum wage to be: not less than $3.85 an hour during the year beginning January 1, 1990, not less than $4.25 an hour during the year beginning January 1, 1991, and not less than $4.65 an hour after December 31, 1991.

SECTION 3—CHANGE IN ENTERPRISE TEST

Section 3 amends the retail or service enterprise test of section 3(s), 13(a)(2) and 13(a)(4) of the FLSA (29 USC 203(s), and 213(a)) adjusting the test to $500,000 in annual gross sales for most small businesses. Except as provided elsewhere in the Act, enterprises grossing less than $500,000 will not covered by the FLSA, although employees of enterprises covered under current law shall continue to receive the current wage, overtime and child labor protections. Numerous technical and conforming amendments are also included in this section.

SECTION 4—PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

Section 4 amends the FLSA to provides that the Virgin Islands is fully covered by the full 6(a)(1) rate, and American Samoa continue to utilize the special industry committee mechanism in the FLSA for establishment of applicable wage rates.

Section 4(c) provides that in the case of Puerto Rico, in addition to the employees designated in 29 USC 205(e) entitled to the rate described in 29 USC 206(a), workers in industries averaging $4.65 an hour or more would also be so entitled. For workers in industries averaging between $4.00 and $4.64 an hour would receive the full rate spread equally over five years. Workers in industries averaging below $4.00 would receive the full rate spread equally over six years, and public sector employees covered by the FLSA by Public Law 99–150 and in categories averaging less than $4.00 an hour would receive the full rate spread equally over seven years.

The balance of section 4 provides technical and conforming amendments.

SECTION 5—TIE CREDIT

Section 5 amends the tip credit provision described in section 3(m) (29 USC 203) from the current 40% tip credit to 54% in 1990 and 50% thereafter.

X. Additional and Minority Views

ADDITIONAL VIEWS OF SENATOR JAMES M. JEFFORDS

Few economic debates are as political as the subject of the minimum wage. Indeed, this debate casts light on the limits of economics. Proponents of a substantial increase can produce studies bolstering their claims, while opponents of an increase can produce ample evidence to the contrary. And in fact, we can never really corroborate our speculation.

As the Majority report points out, most prior increases in the minimum wage have been followed by aggregate gains in employment. But the relevant standard for employment growth is not zero, but what would have happened in the absence of an increase. Disaggregating this factor from an economy where other variables have a much greater impact is difficult if not impossible.

The debate also illuminates the limits of politics. Just as an army falls in the trap of fighting the last year, Congress too often fights with yesterday's tactics. The battle against poverty is an ongoing one, but the way we fight it need not remain the same, indeed, our failures argue for change.

When the Fair Labor Standards Act was enacted in 1938, the family and workplace were far different from what they are today. The majority of women were "housewives," a term that tells us a lot about what has happened since then. Two earner families were not only rare, they were even ostracized during the Depression.

Today, two-thirds of all women with children under the age of three work outside of the home. Only four percent of families have a father working while a mother stays at home to care for the children.

If these statistics sound familiar, it is because they underlie the argument for such legislation as the Family and Medical Leave Act. In their support of that legislation, many of the proponents of a minimum wage seem to recognize that our work force and workplace are changing. Yet that recognition seems to evaporate when faced with the question of increasing the minimum wage.

We do need to establish a minimum standard of living, both for those who work and those who do not. But we do not need to, and should not attempt to establish such a standard for the working poor through the use of the minimum wage alone. Such a policy is inefficient and ineffective.

The vast majority of minimum wage earners are not the poor family of three that has served as a benchmark of sorts for the minimum wage. Indeed, almost three quarters are single, and only 14 percent of minimum wage earners are a head of household. A somewhat higher percentage of minimum wage earners, about one in five, do live in poverty households.

These households, however, are not necessarily going to be helped much by an increase in the minimum wage. The larger barrier for such households is a lack of work, not a lack of pay. Only

15 percent of the households of families in poverty work full-time, year-round. Thus, the concern that an increase in the minimum wage will decrease hours or job opportunities is very real.

Just as the minimum wage is not a relatively large factor in our economy, neither is it a very large factor in addressing poverty. Charles Brown, a senior economist with the Minimum Wage Study Commission, estimated that it takes a 22 percent increase in the minimum wage to effect a one percent increase in poverty household income. It is also worth noting that while the real value of the minimum wage has declined over the past five years, so, too, has the poverty rate.

Given the preponderance of minimum wage earners in one- or two-person families, perhaps our benchmark should be revised to reflect the wage levels required for one- and two-person households to remain out of poverty.

At the same time, we need to address the very real needs of larger families, as a matter of equity and as a critical factor in preventing the deterioration of the family structure. We can and should do this by revising the Earned Income Tax Credit, or EITC, to reflect the family size, adjusting the credit based on the number of dependents.

The advantages to doing so are several. First, the benefits of such a policy are targeted directly to those who need them most, the working poor. Second, any disemployment impact is minimized. Third, other economic dislocations, such as an impact on inflation or competitiveness, are reduced as well. Finally, the reward for working will actually increase for those families which need the greatest assistance.

A reform of the Earned Income Tax Credit will certainly reduce Treasury revenues, but it is important to remember that what is really being reduced are payroll taxes from the working poor. Moreover, the policy and economc offsets to those losses are tremendous. Welfare and other transfer payments would be reduced to those already working, while the increased incentive to work would certainly have an impact on those who do not now hold jobs.

While the Minimum Wage Restoration Act would restore the minimum wage rate, a reform of the EITC would do far more to accomplish everyone's goal—a living wage for the working poor.

JIM JEFFORDS.

ADDITIONAL VIEWS OF SENATOR DAVE DURENBERGER

I believe it is time for Congress to make a substantial increase in the minimum wage. For the last eight years, we have experienced record economic growth in this country, and yet we have failed to change the current $3.35 per hour minimum wage to reflect that growth and the increased costs that have occurred during that time. Opponents of S. 4 cite the possibility that raising the minimum wage over the next three years could cause a loss of jobs and job opportunities. Perhaps if Congress had been doing its job over the last eight years and had made some adjustments in the minimum wage, the effects of this legislation would not be nearly as severe as opponents claim. And, I am not convinced that this legislation will have such adverse effects. I firmly believe that we need to ensure a livable wage for working Americans, and that is why I voted to report S. 4, the Minimum Wage Restoration Act of 1989. However, I do have several concerns that I would like to express at this time.

REGIONAL DISPARITIES

The issue of whether to raise the minimum wage is more a regional matter than a partisan matter. For example, employers in the Twin Cities area of Minnesota face a labor shortage. They cannot find enough workers at $4.00 per hour, let alone at the Federal minimum of $3.35. By contrast, on Minnesota's Iron Range, jobs are hard to come by at any wage, even the minimum wage. Therefore, a substantial increase in the minimum wage will impose more of a burden on firms in these areas, and fewer new jobs may be created.

I would like to see Congress recognize regional differences in minimum wage legislation as we do in the Davis-Bacon Act with the prevailing wage provisions, and as we do in the reimbursement system under Medicare. S. 4 does, in fact, recognize that a depressed wage structure exists in several industries in Puerto Rico, and the bill provides relief to those industries with the lowest average hourly wages. I believe the same arguments that are used to support providing relief from the minimum wage increases for certain industries in Puerto Rico, also support providing relief for firms in rural areas and areas of high unemployment on the mainland.

While there was insufficient support in the committee to enact a provision that would account for regional differences in wages, the committee did take some action to mitigate the impact of this change on many small, rural enterprises. The committee has simplified the enterprise coverage provisions and raised the small business exemption. I am hopeful that by exempting from the minimum wage and overtime provisions all firms with annual gross

sales of under $500,000 per year, that we will provide needed relief to the small, rural businesses that could be most adversely affected by this legislation.

TRAINING WAGE

Since I first came to the U.S. Senate, I have opposed a training wage or a "subminimum wage" for youth. Therefore, I disagree with those who believe in the necessity of adopting a so-called "training wage." President Bush recently proposed, and Senator Hatch offered in committee, a six month training wage of $3.35 per hour for all newly hired employees. Under this measure, employers would not be required to consider past work experience, nor would they be required to provide any specific training during the six month period, nor would they be penalized for replacing an employee at the end of six months with another hew hire.

I am concerned that enactment of this training wage would establish a permanent and unjustified two-tiered wage system that penalizes both new entrants into the work force, as well as women reentering the job market after their children have grown. I believe a two-tier wage structure moves away from the direction we have established over the past 30 years that there should be equal pay for equal work. Moreover, a two-tier structure would only serve to preserve high wage jobs of workers in our generation at the expense of their children. Our children are already struggling to pay for their college educations and to purchase their own homes. I fear that a two-tiered wage system will only exacerbate these problems and place on them additional burdens.

MINIMUM COMPENSATION

There is one final aspect of the minimium wage issue I would like to address that I did not raise during the committee mark-up of S. 4. I believe that this committee must look beyond direct wage compensation and look at an employee's total compensation package. Currently, there are approximately 45 million Americans who have no health care coverge. How many of those are minimum or near-minimum wage employees whose employers do not provide health insurance? How many of those can afford to purchase minimum health care coverage, but are unwilling to do so on their own? In this country we have come to associate health insurance with employment. Unfortunately, not all employers are able or willing to provide their employees with insurance, despite the tax incentives that currently exist.

Rather than impose mandates, I believe we must give employers additional incentives to offer health coverge. We must recognize the health insurance imposes an additional cost on employers. In the near future, I hope this committee will consider offering employers some type of credit toward the minimum wage if they provide health insurance benefits. Such a proposal can help ensure coverage for those who need insurance most—those on the bottom wrung of the wage scale. I look forward to working with the chairman on this matter.

DAVE DURENBERGER.

MINORITY VIEWS OF SENATORS THAD COCHRAN, DAN COATS, ORRIN G. HATCH, NANCY LANDON KASSEBAUM, AND STROM THURMOND

We believe, despite the good intentions of the sponsors of S. 4, that an increase in the minimum wage is an ineffective means of helping the working poor in our society. In fact, it has the actual effect of helping those in the workforce who are least dependent on the minimum wage at the expense of jobs for the unskilled. Based on overwhelming evidence, we maintain that this legislation will eliminate jobs and will have no positive impact on poverty. Moreover, the bill does nothing to address illiteracy or the lack of basic skills or work experience as the root causes of unemployability or prolonged employment in low wage jobs.

Much of the harmful impact of S. 4 could be alleviated given a more modest rate of increase and a workable training wage for new hires. It is our belief that a compromise calling for a 27 percent raise in the minimum wage over a three year period, coupled with an 80 percent six month differential for new hires, could offset a significant number of the projected job losses. Such a package approach would make an increase in the minimum wage less economically damaging and, therefore, less divisive an issue before the Senate.

We believe, however, that senators should have a renewed opportunity to review a brief summary of the arguments which lead us to this position.

JOB LOSSES

While estimates vary, the economic opinion is nearly unanimous that an increase in the minimum wage will result in disemployment. The term "disemployment" includes not only those existing jobs which might be eliminated, but also those jobs which will not materialize in the future. A car wash business, for example, which had planned to open another outlet during the next year, may forego expansion given automatic labor cost increases for the next three years.

According to the Labor Department, one commonly accepted formula for estimating the disemployment effect is that a 10 percent increase in the minimum wage will result in the loss of 100,000 to 200,000 jobs. This means that an increase to $4.65 by 1992 would cost 400,000 to 800,000 jobs. This is consistent with an estimate by the Institute for Research in the Economics of Taxation that 300,000 to 750,000 jobs would be lost as well as with research conducted for the Minimum Wage Study Commission that a 10 percent increase in the minimum wage results in a one to three percent reduction in teenage employment [Brown, Gilroy and Kohen, 1981: Brown, 1987]. A more conservative estimate of disemployment

effect presented to the Labor and Human Resources Committee by Dr. Gerald F. Adams of the Wharton School was that 200,000 jobs could be lost, although the latter estimate was based on a macroeconomic model which is of uncertain value and accuracy in calculating labor market responses to mandatory wage increases.

It is important to note that any increase in the minimum wage will have this disemployment effect. The Labor Department has estimated the job loss at various levels of increase. At $4.25 per hour, the loss is estimated to be between 270,000 and 540,000 jobs; at $4.00 per hour, between 200,000 and 400,000 jobs will be lost.

How and why do these jobs disappear? It is a fundamental economic concept that as the price of any good or service increases, less of it will be purchased. The assertion made in the majority report that the demand for labor does not respond to changes in price is simply inconsistent with every principle of economics. The demand for labor is no different than the demand for personal computers, restaurant meals, automobiles, or any other elastic good or service. The fact is simply that the additional $1.30 per hour in three years, has to come from somewhere. To compensate for a mandatory increase in the price of labor, employers will find less costly substitutes for low-skilled workers (including machines), will cut back on the number or qualify of customer services, reduce employees' work hours, raise prices, or some combination of all four. If an employer cannot make these adjustments, which may be the case in some small businesses, the business is likely to fail.

TRAINING WAGE

Some have argued that America's demographic changes, e.g., an overall reduction in the teenage population and the high demand for labor, will offset these future job losses. Reasoning that it will not hurt to lose several hundred thousand jobs if there are not people to fill them, the proponents of the legislation are in truth dismissing entry-level jobs which are vital stepping stones for unskilled or inexperiencd workers. In plain terms, the jobs which will be eliminated are those which provide both earning and learning opportunities for those who cannot compete for jobs at higher wage levels and who need these opportunities the most.

The disemployment effect of previous increases in the minimum wage was minimized because workers who could not compete at the higher wage level were able to obtain jobs in industries not covered by the Fair Labor Standards Act. Today, nearly every sector of our economy is covered and there are few havens of opportunity for low-skilled workers.

Not only does S. 4 exacerbate the labor force vulnerability for the illiterate, unskilled, or inexperienced in our society, it contains no provision to mitigate the inevitable adverse effects. A substantive, workable training wage is needed.

Although a wage differential will not altogether prevent the loss of jobs, a training wage of 80 percent for all new hires for a six month period would save 170,000 entry-level job opportunities. It will also build some equity into a federally mandated wage floor. We cannot simply write off hundreds of thousands of jobs without acknowledging whose jobs we are giving up.

REGIONAL IMPACT

The majority also notes the testimony of Dr. Adams in stating that the impact on individuals of a minimum wage increase is dependent on the gap between the statutory minimum and the average wage. If, for example, the average wage were $12 per hour, the effect of increasing the minimum would be less than if the average wage were only $10 per hour. To support its claim that the minimum wage hike will result in negligible job losses and costs due to the ripple effect, the majority report stresses that the current minimum is only 36 percent of the national average wage.

The majority has overlooked, however, the fact that many states and regions in our nation have lower average wages, yet they would be forced to implement the same national wage standard. States, particularly in the southern and midwestern parts of our country, which are struggling to attract new business and industry, would be immediately placed at a competitive disadvantage relative to those states with higher wage bases. If the majority is correct, then the workers of Connecticut or Massachusetts will suffer little, but opportunities in Mississippi or Utah will dry up.

A study conducted by Professors Richard McKenzie and Curtis Simon of Clemson University for the National Chamber Foundation, which projects job losses by state and region, indicates that nearly 1.9 million jobs would be lost by 1995 given a minimum wage rate of $4.65. The South would absorb a full third of these losses, or 634,927 jobs. The Midwest loses 445,730 jobs, or 23 percent or the projected total.

These findings are consistent with a study done by Professor Ronald Krumm of the University of Chicago. He found that, overall, congressional districts in and bordering the deep South would be affected most by a minimum wage increase.

The majority report casts aspersions on these findings by stating that they are based on outdated formulations of the minimum wage employment impact produced by Brown, Gilroy and Kohen [1983]. One of the sources cited was an unofficial, unpublished paper by David Luskin. It should be noted that nowhere in the Luskin paper is the fact that increases in the minimum wage reduce teenage employment refuted. Additionally, the body of economic literature supporting the BGK estimates is overwhelming. Fewer than half a dozen papers, most unpublished and one still in the research stages, have challenged this consensus opinion.

NO EFFECT ON POVERTY

The rationale for supporting an increase in the minimum wage has been the desire to upgrade the living standard for the working poor. Certainly this is a worthy goal. If we believed that S. 4 could accomplish it, we would vote for the legislation. The facts, however, do not support the assertion that a minimum wage increase will actually help those the proponents ostensibly want to help.

First, the number of minimum wage earners, 3.9 million in 1988, has declined by 50 percent since 1981; this fact is contrary to the prediction of the Minimum Wage Study Commission in 1981 that the number of minimum wage earners would exceed 13 million by 1990. Significantly, this decline shows that: (1) Americans are not

"stuck" in minimum wage jobs, and (2) the 17 million new jobs created during the economic recovery of the 1980s are not low-wage jobs.

Second, of these 3.9 million minimum wage earners, only 490,000 of them, just 14 percent, are actually heads of households with dependent relatives. A vast majority of minimum wage earners, 72 percent, are spouses, children, or relatives of the head of household. Seventy percent of all minimum wage earners live in families with incomes of 150 percent of poverty or greater. Clearly, the target group is well-defined. The minimum wage increase, however, will apply to *all* minimum wage workers whether or not they are poor. The idea of helping the working poor by increasing the minimum wage across-the-board is a little like shooting into the woods hoping to hit a rabbit. A teenager from a middle- or upper-income family is more likely to be helped than the immigrant father who lacks English language skills or the single mother who never finished high school.

The danger to minimum wage workers of an increase in the minimum wage is quite simply that they will be priced out of the market. Employers can justify higher wages only if productivity and skill levels increase. It stands to reason, for example, that if government were to set a $10 per person floor on the price of restaurant meals, consumers would expect more than a hamburger in a plastic wrapper. Fast food restaurants would be priced out of business since few people would pay that price to eat at one. If the minimum price for labor is $4.65 an hour, employers will require a higher skill level—skills that minimum wage workers do not have or cannot acquire overnight. Minimum wage workers who are heads of household are often the least able to compete for jobs at higher wage and skill levels. One-half of the heads of household living in poverty do not even have a high school diploma. Raising the minimum wage will not provide them with one.

INFLATION

While there remains debate over the precise impact of the minimum wage increase on inflation, there is general agreement that the impact is positive.

Dr. Gerard Adams testified that a minimum wage increase proposed in Senator Kennedy's legislation would have "only moderate effects, up to .2 percent annually." Dr. Beryl W. Sprinkel, Chairman of the Council of Economic Advisors under President Reagan, has projected that a minimum wage increase to $4.65 per hour could result in price increases for consumers amounting to approximately $13 billion.

It stands to reason that a mandated increase in labor costs will drive up prices for goods and services. This is particularly likely when the number of workers required to provide a good or service cannot be adjusted downward. For example, labor costs account for 60 percent of all nursing home expenses. These costs are covered through patient out-of-pocket payments (30 percent), Medicare and Medicaid (68 percent), insurance (1 percent), and other government agencies such as the Veterans' Administration (1 percent). Nursing homes also employ a substantial number of support personnel who

may earn more than the current minimum wage, but less than $4.65. In this industry, it is reasonable to expect significant cost increases given this legislation, costs which would have to be met largely through increased appropriations for Federal and State Medicaid programs.

ALTERNATIVE APPROACHES

We believe that all Americans should have access to educational and job training opportunities which will enhance their earning power. Programs such as the Job Training Partnership Act (JTPA) and the Carl Perkins Vocational Education Act are only two of hundreds of federal, state, local, and private sector efforts to provide such opportunities. These programs should continue to receive support and emphasis.

Additionally, we believe new ideas should be examined. We should not let ourselves be trapped into seeking out only the ususal solutions. We propose a more thorough study of proposals to restructure the Earned Income Tax Credit (EITC). An expansion of this refundable tax credit has several attractive features: (1) It would more carefully focus benefits indirectly on those families who need them; (2) It would increase the after-tax income of poor families without jeopardizing their jobs; and (3) The Council of Economic Advisors last year estimated that the cost to the taxpayers of a minimum wage increase to $4.65 per hour would be approximately $1.8 billion, $1 billion in lost revenues and $800 million in indirect outlays. One version of an expanded EITC is expected to cost only $1.5 billion.

Finally, we acknowledge the importance many people attach to the minimum wage as a base wage as well as its symbolic role as a weapon against poverty. A more widely acceptable and constructive alternate proposal—still resulting in a minimum wage increase—would be an increase in the minimum wage to $4.25 by 1992. An increase of 30 cents each year for three years, this 27 percent increase goes more than half-way to meet the wage hike suggested by S. 4 yet saves 200,000 jobs. The inclusion of an 80 percent six months training wage will encourage the employment of individuals who are unskilled or inexperienced and is estimated to save an additional 170,000 jobs. This compromise would accomplish the goal of raising the base wage without the excessive job losses which would occur under the provisions of S. 4.

CONCLUSION

Since enactment of the Fair Labor Standards Act Amendments of 1977 which created the Minimum Wage Study Commission (MWSC), the minimum wage has received considerably more attention as a topic of economic research. The evidence which has accumulated since then has borne out earlier conclusions by University of Chicago professor and Nobel Laureate George Stigler [1946], Finis Welch of UCLA [1971; 1973; 1975], Columbia's Jacob Mincer [1976], Thomas Moore of Michigan State [1971], and Yale Brozen of the University of Chicago [1969], to name just few. These conclusions have been that the minimum wage, by raising the relative

price of labor, reduces employment opportunities, particularly for unskilled and inexperienced workers.

Recently, the research has also focused on the efficacy of the minimum wage as an anti-poverty tool. Again, the conclusion of a wide range of economists is that the minimum wage is ineffective as a means of redistributing income and assisting the poor.

It is time Congress recognized the negative impacts of the minimum wage to the economy in general as well as the risks to those workers the proponents of the minimum wage increase ostensibly want to help. New ideas and proposals must be considered to provide long-term, permanent hope and opportunity for the working poor; Congress cannot grant it simply by passing a law. At the very least, Congress should enact a minimum wage proposal which risks the fewest number of jobs.

THAD COCHRAN.
DAN COATS.
ORRIN G. HATCH.
NANCY LANDON KASSEBAUM.
STROM THURMOND.

XI. Changes in Existing Law

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change in proposed is shown in roman);

Fair Labor Standards Act

(29 U.S.C.—Chapter 8)

* * * * * * *

§ 203. Definitions

As used in this chapter—

(a)–(l) * * *

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided,* That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount [in excess of 40 per centum of the applicable minimum wage rate.] *in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1990, and (2) 50 percent of the applicable minimum wage rate after December 31, 1990,* except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to

prohibit the pooling of tips among employees who customarily and regularly receive tips.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor [*Provided,* That, within]. *Within* the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, and agreement, (1)(*A*) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2)(*B*) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3)(*C*) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. [For purposes of this subsection]

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(1)(*A*) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is [public or private or] operated for profit or not for profit), or

(2)(*B*) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(3)(*C*) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

[(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which—

[(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the

retail level which are separately stated), and beginning February 1, 1969, is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in paragraph (2), whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

[(2) is an enterprise which is comprised exclusively of one or more retail or service establishments, as defined in section 213(a)(2) of this title, and whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1978, whose annual gross volume of sales made or business done is not less than $275,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1980, whose annual gross volume of sales made or business done is not less than $325,000 (exclusive of excise taxes at the retail level which are separately stated), and after December 31, 1981, whose annual gross volume of sales made or business done is not less than $362,500 (exclusive of excise taxes at the retail level which are separately stated);

[(3) is engaged in laundering, cleaning, or repairing clothing or fabrics;

[(4) is engaged in the business of construction or reconstruction or both;

[(5) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

[(6) is an activity of a public agency.

[Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection. The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

[Notwithstanding paragraph (2), an enterpise which is comprised of one or more retail or service establishments, which on June 30, 1978, was subject to section 206(a)(1) of this title, and which because of a change in the dollar volume standard in such paragraph prescribed by the Fair Labor Standards Amendments of 1977 is not subject to such section, shall, if its annual gross volume of sales made or business done is not less than $250,000 (exclusive

of excise taxes at the retail level which are separately stated), pay its employees not less than the minimum wage in effect under such section on the day before such change takes effect and shall pay its employees in acordance with section 207 of this title. A violation of the preceding sentence shall be considered a violation of section 206 or 207 of this title, as the case may be.]

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(B) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

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§ 205. Special industry committee for [Puerto Rico and the Virgin Islands] *American Samoa*

(a) ESTABLISHMENT; RESIDENTS AS MEMBERS OF COMMITTEES.—The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees in [Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands] *American Samoa* engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under said section to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of [such island or islands] *American Samoa* where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of [Puerto Rico and the Virgin Islands] *American Samoa*. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 208 of this title.

* * * * * * *

[(e) APPLICATION OF SECTIONS 206 AND 208 TO EMPLOYEES IN PUERTO RICO OR THE VIRGIN ISLANDS.—The provisions of this section, section 206(c) of this title, and section 208 of this title shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this chapter in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this chapter. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States.]

* * * * * * *

§ 206. Minimum wage

(a) EMPLOYEES ENGAGED IN COMMERCE; HOME WORKERS IN PUERTO RICO [AND VIRGIN ISLANDS]; EMPLOYEES IN AMERICAN SAMOA; SEAMEN ON AMERICAN VESSELS; AGRICULTURAL EMPLOYEES.—Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

[(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section:]

(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1989, not less than $3.85 an hour during the year beginning January 1, 1990, not less than $4.25 an hour during the year beginning January 1, 1991, and not less than $4.65 an hour after December 31, 1991;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such reg-

ulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b) of this section, not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint [in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this chapter as amended from time to time] *pursuant to sections 205 and 208.* [Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico or the Virgin Islands]. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(5) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

* * * * * * *

(c) WAGE RATES SUPERSEDED BY RECOMMENDATION OF SPECIAL INDUSTRY COMMITTEE.—[(1) The rate or rates provided by subsection (a)(1) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order (A) heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of

this title, and (B) which prescribes a wage order rate which is less than the wage rate in effect under subsection (a)(1) of this section.

[(2)(A) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is at least $2 an hour shall, except as provided in paragraph (3), be increased—

[(i) effective January 1, 1978, by $0.25 an hour or by such greater amount as may be recommended by a special industry committee under section 208 of this title, and

[(ii) effective January 1, 1979, and January 1 of each succeeding year, by $0.30 an hour or by such greater amount as may be so recommended by such a special industry committee.

[(B) Each wage order rate under a wage order described in paragraph (1) which in December 31, 1977, is less than $2 an hour shall, except as provided in paragraph (3), be increased—

[(i) effective January 1, 1978, $0.20 an hour or by such greater amount as may be recommended by a special industry committee under section 208 of this title, and

[(ii) effective January 1, 1979, and January 1, of each succeeding year—

[(I) until such wage order rate is not less than $2.30 an hour, by $0.25 an hour or by such greater amount as may be so recommended by a special industry committee, and

[(II) if such wage order rate is not less than $2.30 an hour, by $0.30 an hour or by such greater amount as may be so recommended by a special industry committee.

[(C) In the case of any employee in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title, to whom the rate or rates prescribed by subsection (a)(5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the applicable increases prescribed by subparagraph (A) or (B) shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

[(3) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a)(1) of this subsection, which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under subsection (a)(1) of this section shall apply to such employee.

[(4) Each minimum wage rate prescribed by or under paragraph (2) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 208 of this title) fising a higher minimum wage rate.]

(c)(1) the rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

(i) the United States,

(ii) an establishment that is a hotel, motel or restaurant,

(iii) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

(iv) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on January 1, 1990, and each January 1 thereafter through January 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on January 1, 1994.

(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on January 1, 1990, and each January 1 thereafter through January 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on January 1, 1995.

(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on January 1, 1990, and each January 1 thereafter through January 1, 1996, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on January 1, 1996.

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§ 208. Wage orders in [Puerto Rico and the Virgin Islands] *American Samoa*

(a) CONGRESSIONAL POLICY; RECOMMENDATION OF WAGE RATE BY INDUSTRY COMMITTEE.—The policy of this chapter with respect to industries or enterprises in [Puerto Rico and the Virgin Islands] *American Samoa* engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title. [The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee—

[(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who put for section 206(c)

of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title, and

[(2) may, from time to time, recommended increases in the incremental increases authorized by section 206(c)(2) of this title.] The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in [Puerto Rico or the Virgin Island, or in Puerto Rico and the Virgin Islands,] *American Samoa* engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in production of goods for commerce in any such industry or classifications therein, *and who but for section 206(a)(3) would be subject to the minimum wage requirements of section 206(a)(1).* Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) INVESTIGATION OF INDUSTRY CONDITION BY INDUSTRY COMMITTEE; MATTERS CONSIDERED.—Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice here such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in [Puerto Rico or in the Virgin Islands] *American Samoa* a competitive advantage over any industry in the United States outside of [Puerto Rico and the Virgin Islands;] *American Samoa* except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206[(c)]*(a)(3)* of this title, unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.

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§ 213. Exemptions

(a) MINIMUM WAGE AND MAXIMUM HOUR REQUIREMENTS.—The provisions of sections 206 (except subsection (d) in the case of para-

graph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hour worked in the workweek are devoted to such activities); or

[(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 203(s)(5) of this title), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 203(s) of this title. A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or]

(3) any employee employed by an establishment which is an amusement or recreational establishment organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

[(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided,* That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made

or processed is made within the State in which the establishment is located; or]

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(g) CERTAIN EMPLOYMENT IN RETAIL OR SERVICE ESTABLISHMENTS, AGRICULTURE.—The exemption from section 206 of this title provided by [paragraphs (2) and] *paragraph* (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated [except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title].

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§ 214. Employment under special certificates

(a) LEARNERS, APPRENTICES, MESSENGERS.—The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) STUDENTS.—(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher [or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title], of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of

employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificate under this section at anytime before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (iii) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title or not less than $1.30 an hour, whichever is the higher [(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title)], of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher [(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title)], of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

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